

Clerk's Office  
Filed Date:

4/2/2021

U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK  
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
DENIS NESTEROV, *individually and on behalf of  
all others similarly situated*,

Plaintiff,

**ORDER**

18-CV-7200 (MKB) (SJB)

v.

KVADRO S CORP. and SERGEY LISENKO,

Defendants.  
-----

MARGO K. BRODIE, United States District Judge:

Plaintiff Denis Nesterov commenced the above-captioned action against Defendants Kvadro S Corp. ("Kvadro") and Sergey Lisenko on December 18, 2018, alleging failure to pay minimum wage and overtime in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA") and New York Labor Law §§ 650 *et seq.* (the "NYLL") and failure to furnish accurate wage statements in violation of NYLL § 195.<sup>1</sup> (Compl., Docket Entry No. 1; Am. Compl., Docket Entry No. 21.) Plaintiff obtained certificates of default and moved for a default judgment.<sup>2</sup> On December 3, 2019, the Court referred the motion to Magistrate Judge Sanket J. Bulsara for a report and recommendation. (Order dated Dec. 3, 2019.) Judge Bulsara directed Plaintiff to correct apparent service of process errors and ordered Plaintiff to file proof of service.<sup>3</sup> Plaintiff failed to do so and by report and recommendation dated March 11, 2021,

---

<sup>1</sup> Plaintiff brought this action as a putative collective action under the FLSA and a putative class action under the NYLL. (Am. Compl. ¶¶ 1–2.)

<sup>2</sup> (Pl.'s Mot. for Default J. ("Pl.'s Mot."), Docket Entry No. 18; Pl.'s Mem. in Support of Pl.'s Mot., Docket Entry No. 19.)

<sup>3</sup> (Order dated Oct. 7, 2020; Order dated Feb. 22, 2021.)

Judge Bulsara recommended that the Court dismiss the Amended Complaint without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure because Plaintiff has failed to properly serve Defendants (the “R&R”). (R&R, Docket Entry No. 27.)

No party has objected to the R&R and the time for doing so has passed.

## **I. Discussion**

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

## **II. Conclusion**

Accordingly, the Court adopts the R&R and dismisses the Amended Complaint without prejudice. The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff and close this case.

Dated: April 2, 2021  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge